

COUNCIL BILL NO. 1823

INTRODUCED BY RANDY E. SCHMIDTORDINANCE NO. 1730**AN ORDINANCE**

OF THE CITY OF DUBOIS AUTHORIZING THE INCREASING OF THE NONELECTORAL INDEBTEDNESS OF THE CITY BY THE DELIVERY OF A GUARANTEED REVENUE NOTE IN A TOTAL AMOUNT OF UP TO \$2,490,000.00 AT ANY TIME OUTSTANDING FOR THE PURPOSE OF FINANCING THE REPLACEMENT OF THE CITY'S WATER METERS; SEWAGE METERS; AUTOMATIC METER READING DEVICES; AND OTHERWISE REPAIRING, REPLACING AND CONSTRUCTING ALL OTHER DETERIORATED PORTIONS OF THE CITY'S INFRASTRUCTURE; CONFIRMING THE APPLICATION FOR LOAN ACCEPTED BY S&T BANK, DUBOIS BRANCH, FOR THE TERMS AND CONDITIONS OF SAID NOTE; FIXING THE FORM, INTEREST RATE, PAYMENT DATES AND MATURITY DATES FOR SAID NOTE; PLEDGING THE REPAYMENT OF SAID NOTE; AUTHORIZING THE EXECUTION AND DELIVERY THEREOF; APPROVING THE CONSULTING FIRM'S COST ESTIMATES AND REPORTS; AUTHORIZING THE FILING FOR APPROVAL OF SAID DEBT WITH THE PENNSYLVANIA DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT; AND AUTHORIZING THE PAYMENT OF THE REQUIRED FILING FEE THEREFOR.

WHEREAS, it is necessary that the nonelectoral indebtedness of the City of DuBois, Clearfield County, Pennsylvania, be authorized to be increased in the total amount of up to \$2,490,000.00 through the issuance of a Guaranteed Revenue Note of the City of DuBois in the principal amount of up to \$2,490,000.00 for the purpose of refinancing the replacement of the city's water meters; sewage meters; automatic meter reading devices; and otherwise repairing, replacing and constructing all other deteriorated portions of the city's infrastructure, pursuant to and in accordance with final plans and specifications and reports prepared by the City's Consulting Firm, Johnson Controls, and the paying of the costs and expenses incurred in preparing and executing the Note which is to be issued to evidence said nonelectoral indebtedness; and

WHEREAS, the City of DuBois has received preliminary realistic cost estimates indicating the sum of \$2,500,000.00 will be needed to complete the project; and

WHEREAS, in order to render said Note effective as to the City as "excluded self-liquidating nonelectoral debt", it will be necessary, pursuant to Sections 8006 and 8026 of the Local Government Unit Debt Act, for the City Council to approve and adopt the Consulting Firm's cost estimates as set forth in "Exhibit A" attached hereto and the Consulting Firm's Reports submitted herewith.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the City Council of the City of DuBois, and it is hereby ordained and enacted by authority of the same as follows:

SECTION 1. The City Council hereby ratifies, reconfirms and accepts the terms and conditions of the acceptance of its loan application by S&T Bank, DuBois Branch, for the loan to the City of up to \$2,490,000.00 with interest not to exceed 4.27% per annum for 180 months of the loan term with payments of interest and principal payable on the schedule set forth by the said S&T Bank, DuBois.

In compliance with Section 8161 of Act 177 of 1996, the members of the City Council have determined that applying for a loan from S&T Bank is in the best interests of the local government unit. Therefore, the general obligation Note in the amount of \$2,490,000.00 herein authorized to be issued and sold is hereby awarded and sold to S&T Bank, DuBois Branch, in accordance with its acceptance of the City's loan application and the terms and conditions imposed by it to purchase the said Note at par; provided the said Note is dated the date of delivery thereof to S&T Bank and is in the form set forth in Section 5 of this Ordinance; and

further provided that the proceedings have been approved by the Department of Community and Economic Development if such approval is required under the provisions of the Act.

In accordance with the aforesaid bid and subject to the approval of the authorizing proceedings by the Pennsylvania Department of Community and Economic Development, the Mayor and President of City Council or the acting City Manager is hereby directed to deliver said Note when fully executed to S&T Bank, DuBois Branch.

SECTION 2. The excluded self-liquidating nonelectoral indebtedness of the City of DuBois be, and the same hereby is, initially authorized to be increased from time to time by an amount not to exceed at any time outstanding the sum of up to \$2,490,000.00. Said nonelectoral debt has been established as self-liquidating and; therefore, excludable in accordance with Section 8026 of the Local Government Unit Debt Act pursuant to the Consulting Firm's Reports approved hereunder.

SECTION 3. The total debt of up to TWO MILLION FOUR HUNDRED NINETY THOUSAND DOLLARS (\$2,490,000.00), of excluded, self-liquidating nonelectoral debt of the City of DuBois shall be evidenced by a Note in the total principal amount of up to, but not exceeding \$2,490,000.00 in favor of S&T Bank, DuBois Branch, as set forth in the aforementioned loan application acceptance from S&T Bank, DuBois Branch.

The principal and interest on said Note shall be payable at the offices of S&T Bank, DuBois Branch, Liberty Boulevard, DuBois, PA, or by mail at P.O. Box 247, DuBois, PA 15801-0247.

SECTION 4. All of said Note, or any portion of the principal amount thereof, may be prepaid at any time. Any such prepayments may be made by the City without premium or penalty.

SECTION 5. The form of said Note to be issued from time to time hereunder shall be substantially as follows.

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CITY OF DUBOIS

CLEARFIELD COUNTY, PENNSYLVANIA

Promissory Note

\$2,490,000.00

DuBois, Pennsylvania

FOR VALUE RECEIVED, the CITY OF DUBOIS, a local government unit and body corporate and politic of the Commonwealth of Pennsylvania, hereby promises to pay to S&T Bank, DuBois Branch P.O. Box 247, DuBois, PA 15801-0247, in lawful money of the United States of America, the principal sum of TWO MILLION FOUR HUNDRED NINETY THOUSAND DOLLARS (\$2,490,000.00) on _____, together with interest to be paid from the date hereof on the unpaid balance of said principal sum at the rate of interest per annum (computed on the basis of a year of 365 days) equal to a fixed rate of 4.27% for 180 months of said loan.

It is hereby certified that all acts, conditions, and things required to be or be done, happen, and be performed precedent or and in the issuance of this Note or in the creation of the debt of which it is evidence, have been done, happened, and been performed in regular and due form and manner as required by law; and that this Note, together with all other indebtedness of the City is not in excess of any conditional or statutory limitation.

No recourse shall be had for the payment of principal or interest on this Note against any council member, officer, agent, attorney or employee, past, present or future of the City, or of any successor, as such, either directly or indirectly or through the City, it being understood and agreed that this Note is solely a corporate obligation of the City.

This Note evidencing a borrowing authorized by an Ordinance or Resolution of the City Council of the City of DuBois duly and properly adopted on September _____, 2008.

IN WITNESS WHEREOF, the CITY OF DUBOIS has caused this Note to be properly executed by the Mayor and President of City Council and the City Controller of the City and its corporate seal to be hereto affixed and attested to by the City Secretary as of the _____ day of _____, 2008.

CITY OF DUBOIS

By *John S. Sphar*
Mayor and President of Council

By *Diane Bernardo*
City Controller

ATTEST:

Frances L. Lias
City Secretary

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SECTION 6. It is hereby authorized and directed that said Note shall be executed on behalf of the City by the Mayor and President of the City Council and by the City Controller, and there shall be affixed thereto the City seal which shall be attested by the City Secretary, and said Note shall thereafter be valid and obligatory for all purposes, and shall be entitled to all benefits conferred thereon under the provisions of this Note Ordinance. The Mayor and President of the City Council is hereby authorized and directed to deliver said Note to S&T Bank, at its DuBois Branch on Liberty Boulevard or by mail at P.O. Box 247, DuBois, PA 15801-0247.

SECTION 7. The City covenants with the holder of said Note, in compliance with Section 8104 of the Local Government Unit Debt Act, that it will budget and duly and punctually pay said principal and interest on said Note at the times and place and in the manner stated in said Note according to the true intent and meaning thereof, and for such budgeting, appropriation and payment, the City pledges its full faith and credit, revenues and taxing power. This covenant shall be specifically enforceable.

SECTION 8. The City covenants that it will continue diligently to completion with the replacement of the city's water meters; sewage meters; automatic meter reading devices; and otherwise repairing, replacing and constructing all other deteriorated portions of the city's infrastructure, as promptly as practicable, all in accordance with the Plans and Specifications and Reports of the City's Consulting Firm.

The City further covenants to levy and assess upon all persons and property subject to taxation for City purposes, an annual tax in each of the fiscal years that said Note shall remain outstanding, of so many mills as will yield amounts which, together with all other available general revenues of the City, including, specifically, those of the City's water and sewer systems,

shall be applied exclusively to said debt service charges on said Note as the same shall from time to time become due and payable. The collection of said tax, if any is necessary, shall commence with the fiscal year 2009.

In addition to the aforementioned, the principal of and interest on said Note to be issued pursuant to the aforementioned covenant shall first be payable out of the receipts and revenues of the City derived from the water and sewer rates and charges levied and collected by the City for the use of the Water and Sewer Systems, including all payments of water and sewer service charges from the Township of Sandy under and pursuant to any order of court or agreement entered into between the City of DuBois and the Township of Sandy, and any amendments or modifications thereto or renegotiations or successors thereof, between the City and the Township, after first paying therefrom the cost of operating, maintaining and repairing said Water and Sewer Systems, and such net receipts and revenues shall be pledged to such payments, and said Note shall constitute a first lien against such net receipts and revenues so pledged, the payment of the principal and interest on said Note will be guaranteed by the City in the event and to the extent of any deficiency at any time in said pledged net receipts and revenues, and, accordingly, the City will declare that said Note shall be a general obligation of the City, for the prompt and full payment of all or any part of which, the full faith, credit and taxing power and resources of the City will be irrevocably pledged. This covenant shall be specifically enforceable and the City understands and intends that its pledge as above-stated of its full taxing power will be unlimited as to rate or amount.

SECTION 9. The required net moneys realized from the water and sewer rates and other charges, after payment of operating costs of the Water and Sewer Systems, from taxes imposed hereunder (if any) and all other general revenue moneys of the City otherwise usable and required, and any required capitalized interest moneys from the Construction Account, shall be payable to S&T Bank, DuBois Branch at the times due in accordance with the attached schedule.

SECTION 10. The City Council herewith directs that the necessary documentation be filed with the Pennsylvania Department of Community and Economic Development so that the debt incurred hereunder may be approved as nonelectoral debt of the City with up to \$2,490,000.00 thereof being exercised as to the City as self-liquidating nonelectoral debt on the basis that the net sewer service charges for services furnished by the City's Water and Sewer Systems, together with all water and sewer service payments guaranteed by the Township of Sandy as a result of agreement or Order, will be sufficient to pay the total principal and interest on the Note that is anticipated to retire the Note. On this basis, it is hereby declared that the net nonelectoral debt (not excluded) of the City to be incurred hereunder, as represented by the Notes and subsequently the Note shall be \$0.00 and the self-liquidating nonelectoral debt (excluded) of the City to be incurred hereunder shall initially be up to \$2,490,000.00, which together with all presently existing net debt of the City will not be in excess of the constitutional limitations as set forth in the Local Government Unit Debt Act. The Mayor and President of City Council, the City Controller, and the City Secretary are hereby further directed to prepare, execute and verify under oath a "Debt Statement" of the City in order to obtain approval for the Note, and to submit the same, together with an executed "Application for Approval" and executed "Debt Statement" and executed "Borrowing Base Certificate" and executed "Self-Liquidating Debt Exclusion Certificate" for the Note and the necessary filing fee to the Pennsylvania Department of Community and Economic Development pursuant to the Local Government Unit Debt Act as promptly as practicable. Upon approval by the Pennsylvania Department of Community and Economic Development, the "Certificate of Approval" and the "Self-Liquidating Debt Exclusion Certificate" shall be promptly filed with the Records of the City in accordance with the Local Government Unit Debt Act. The City Council also hereby approves and adopts the Consulting Firm's cost estimates as set forth in Exhibit "A" attached hereto and the Consulting Firm's Reports submitted herewith. Said officers are also hereby further authorized and directed to perform all other acts and do all other things necessary to obtain said approvals and perfect such exclusion.

SECTION 11. All moneys derived from the proceeds of the loan and evidenced by the Note, including the payment of interest on the Note and repayment of principal as provided herein, shall be deposited in a sinking fund to be established in accordance with the provisions of the Local Government Unit Debt Act and the S&T Bank, DuBois Branch, shall be the sinking fund depository required to be appointed under said Act. The proper and appropriate officers of the City are hereby authorized and directed to contract for the services of the S&T Bank, DuBois

Branch, as a sinking fund depository and to perform all actions necessary to comply with the requirements for the establishment of a sinking fund and the appointment of a sinking fund depository under the provisions of the Local Government Unit Debt Act.

SECTION 12. The City Council hereby further authorizes and directs that the City shall replace the city's water meters; sewage meters; automatic meter reading devices; and otherwise repairing, replacing and constructing all other deteriorated portions of the city's infrastructure, pursuant to and in accordance with the Plans and Specifications and Reports previously provided by Johnson Controls, the Consulting Firm for the City on these projects, with said debt being secured as provided hereunder and with said projects to have an estimated useful life in excess of forty (40) years.

SECTION 13. The proper and appropriate officers of the City are also hereby authorized and directed to perform any and all other acts necessary and proper to be done as required by the Local Government Unit Debt Act, in connection herewith.

SECTION 14. All other ordinances or resolutions or parts of ordinances or resolutions not in accordance with this Note Ordinance are hereby repealed insofar as they affect this Note Ordinance.

SECTION 15: This Note Ordinance shall take effect five (5) days after the second and final advertisement of its adoption.

ORDAINED AND ENACTED into law by the City Council of the City of DuBois in lawful session assembled this 9th day of September, 2008.

CITY OF DUBOIS

By 
Mayor and President of City Council

ATTEST:


City Secretary